IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

Crl.MC.No. 5254 of 2003()

ST.901/2003 of JUDL.MAGISTRATE OF FIRST CLASS-I, PUNALUR

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PETITIONER: ACCUSED.

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1. SRI.S.RAMAKRISHNA SHARMA, DIRECTOR,
   THE TRAVANCORE RUBBER AND TEA CO.LTD.,
   PLANTATION HOUSE, PATTOM. PALACE P.O.
   THIRUVANANTHAPURAM 695 004.

2. SRI.N.SIVATHANU PILLAI, DIRECTOR,
   THE TRAVANCORE RUBBER AND TEA CO.LTD.,
   PLANTATION HOUSE, PATTOM PALACE P.O.
   THIRUVANANTHAPURAM 695 004.

3. SRI.N.BOOTHALINGAM, DIRECTOR,
   THE TRAVANCORE RUBBER AND TEA COMPANY LIMITED,
   PLANTATION HOUSE, PATTOM PLACE P.O.,
   THIRUVANANTHAPUAM 695 004.

4. SRI.S.LAKHSMANA SARMA,
   DIRECTOR, THE TRAVANCORE RUBBER AND TEA COMPANY
   LTD., PLANTATION HOUSE, PATTOM PLACE P.O.
   THIRUVANANTHAPURAM 695 004.

5. SMT.LAKSHMI, DIRECTOR,
   THE TRAVANCORE RUBBER AND TEA COMPANY LTD.,
   PLANTATION HOUSE, PATTOM PLACE P.O.,
   THIRUVANANTHAPURAM 695 004.

6. SMT.MEENAKSHI AMMAL, DIRECTOR,
   THE TRAVANCORE RUBBER AND TEA COMPANY LTD.,
   PLANTATION HOUSE, PATTOM PLACE P.O.
   THIRUVANANTHAPURAM 695 004.

7. SMT.S.GANGA AMMAL, DIRECTOR,
   THE TRAVANCORE RUBBER AND TEA COMPANY LTD.,
   PLANTATION HOUSE, PATTOM PALCE P.O,
   THIRUVANANTHAPURAM 695 004.

BY ADV. SRI.JOSEPH KODIANTHARA
SRI.MATHEWS K.UTHUPPACHAN

RESPONDENTS: COMPLAINANTS.

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1. INSPECTOR OF PLANTATIONS, NEDUMANGADU.

2. CHIEF INSPECTOR OF PLANTATIONS,
PUNALUR.

3. STATE OF KERALA REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY Sr. PUBLIC PROSECUTOR SRI C.M. NAZAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 5-10-2007, ALONG WITH CRMC NO. 5255 OF 2003 THE COURT ON 18-12-2007 PASSED THE FOLLOWING:

ORDER ON CRL.M.A NO.12034/2003

DISMISSED.

18-12-2007 SD/- V.K.MOHANAN, JUDGE.

//TRUE COPY//

V.K.MOHANAN, J.

CRL.M.C. Nos. 5254 & 5255 of 2003-B

Dated, 18th December, 2007.

ORDER

Crl.M.C. No. 5254/2003 is filed with a prayer to quash the complaint in S.T.No.901/2003 pending before the Judicial First Class Magistrate -I, Punalur and Crl.M.C. No.5255/2003 is also for quashing the complaint in S.T.No.900/2003 pending before the same court. Since the reliefs sought for in both these Crl.M.Cs are similar, the facts and circumstances involved are more or less identical and especially the parties are the same, these matters are heard together and being disposed of by this common order.

2. The petitioners/accused, who are 7 in number in Crl.M.C.No.5254/2003, are the Directors of Travancore Rubber & Tea Co. Ltd., Plantation House, Pattom Palace P.O., Thiruvananthapuram. The company inter-alia owns the Ambanad estate, Kalthuritty in Kollam district, which is principally planted with tea and rubber which has an extent of about 1000 hectares. The Inspector of Plantations, Nedumangad filed annexure-A

complaint against the above Directors dated 14-3-2003 under section 39 of the Plantation Labour Act, 1951 (Central Act 69 of 1951) (hereinafter referred to as `the Act'), and Rules,1959 upon which S.T.No.901/2003 is instituted alleging that the petitioners/accused who are the employers, failed to rectify the defects noted by the complainant and thereby committed the offence punishable under section 36 of the above Act. Crl.M.C. No.5255/2003 is also filed by the same persons with a prayer to quash annexure A complaint dated 14-3-2003 in S.T. No.900/2003 on the file of the Judicial Magistrate of the First Class-I, Punalur wherein the offence alleged against them is also one punishable under Section 36 of the Act. In both the cases, the Ist respondent inspected the Ambanad Estate owned by the petitioners at about 9.30 a.m. on 17-9-2002 and on detecting certain defects, issued annexure-B1 Inspection order-cum-Written order dated 30-9-2002. In both these cases, the Manager of the company issued annexure B2 reply dated 24-10-2002 to

annexure B1 notice dated 30-9-2002 of the Ist respondent and on receipt of annexure B2 reply, the Ist respondent issued annexure C1 order dated 1-1-2003 to all the petitioners, by which they were directed to take immediate steps to rectify the defects noted therein and to intimate the facts to his office within 10 days from that order. In the said order, the petitioners were informed that the failure to comply with the orders are offences punishable under the above Act and Rules and they were further warned that if they failed to comply with the orders, prosecution steps would be taken without further notice on the presumption that they had nothing to say in the matter. In both the cases, annexure C2 reply dated 20-1-2003 was sent to the Ist respondent by the Company Secretary. Thereafter, again on 13-2-2003 at 10 a.m., the Ist respondent further visited and inspected the estate and found that certain defects which noticed earlier and ordered to rectify on the basis of which annexure D1 Show Cause/Prosecution Notice

dated 21-2-2003 was served on all the petitioners to which annexure D2 reply dated 3-3-2003 was sent by the Chairman of the company. No other petitioners issued any such reply. As the defects noticed and brought to the notice of the accused were not rectified, the Ist respondent preferred annexure-A complaint before the Judicial Magistrate of the Ist Class-I, Punalur for the above offences. The only factual variation among the two cases is with respect to the site (place of occurrence) at which the inspection was conducted by the Ist respondent on 17-9-2002 and 13-2-2003. In Crl.M.C. No.5254/2003, the allegations are with respect to the failure in rectifying the defects noticed in workers' residential Line Nos.82, 92 and 55 of Ambanad Estate owned by the company. But in the case of Crl.M.C.5255/2003, the defects were noticed with respect to the workers' residential Line Nos. 60, 59, 68, 92 and 85 of the very same Ambanad Estate owned by the company of which, the petitioners are the Directors. Except the above aspects, all the factual and legal

positions involved in those two cases are identical.

3. Going by annexure I complaint and annexure B1 inspection order-cum-written order, it can be seen that on 30-9-2002, the Ist respondent had conducted an inspection in the above sites and he had detected 11 defects mentioned in annexure B1 and the accused were directed to cure the defects in the manner stated in annexure B1. Since the reply given by the Manager was not satisfactory, the Ist respondent has sent annexure C1 inspection order-cum-written order dated 1-1-2003 to all the petitioners being the Directors of the company to which the Secretary of the company issued annexure C2 reply dated 20-1-2003. Since the defects noted and brought to the notice of the petitioners were not cured as directed, the Ist respondent then issued annexure D1 Show cause/Prosecution notice dated 21-2-2003 to all the petitioners. Thereafter, according to the complainant, though the Chairman of the company sent annexure D2 reply, the same was not satisfactory as the defects pointed

out were not rectified and the same still exist. In the above circumstances, annexure A complaint was filed by the Ist respondent on the basis of which cognizance was taken and S.T.Nos.900/03 and S.T.No.901/2003 were instituted in the Judicial First Class Magistrate Court-I, Punalur against the petitioners/accused. In the above Crl.M.Cs, the petitioners/accused are seeking an order quashing the above complaints and all proceedings thereon.

4. I have heard extensively the learned counsel appearing for the petitioners, the Director General of Prosecutions, and the learned Public Prosecutor.

5. The learned counsel took me through various documents and other materials available on records and also through various provisions contained in the Plantations Labour Act 1951 (Act 69/51) and Rules 1959. After inviting my attention to section 2(k)(ii) of the above Act, which defined "worker" the learned counsel submitted that the above Act is not applicable in the present case as

the workers herein are getting monthly wages more than Rs.750/-. In support of the above contention, counsel for the petitioners very much relied on the documents viz., annexure E1 to E6; annexure F1 and F2 circulars issued by the Association of Planters of Kerala. Annexure-G is another document produced along with the Crl.M.Cs. which is an order No.G1/20739 dated 20-9-97 issued by the Labour Commissioner, Thiruvananthapuram with respect to a dispute arose out of claim for medical benefit for the workers in Plantation. The questions, related to the jurisdiction and powers of this Court under section 482 of Cr.P.C to accept and act upon the documents filed in these proceedings, especially which are not relied or admitted by the prosecution, are bearing several legal questions and far reaching consequences which will be considered later.

6. In these cases, it is relevant to note that in order to accept the contention of the petitioners that the workers of their Plantation will not come under the

purview of section 2(k)(ii) of the Act, primarily, the petitioners have to establish that their workers are getting monthly wages of more than Rs.750/-. The subject matter of the present two cases are that the workers those who are residing in Line Nos.82, 92 and 55 which is the subject matter of Crl.M.C. No.5254/2003 and Line No.60,59, 68, 92 and 85 which is the subject matter of Crl.M.C.5255/2003 are not provided with the facilities provided as per the Rules which are mentioned in annexures B1, C1 and D1 notices. In these proceedings, this Court is not in a position to come into a conclusion as to who are the workers residing in those lines and what are the wages which are being received by them from the petitioners and all those facts which are disputable can be resolved only through evidence at the time of trial. The documents mentioned above which are relied on by the petitioners are not helpful for them to come into a conclusion that workers residing in the aforesaid lines of the estate are not coming within the meaning of

"workers" defined in the Act.

7. Now let us examine the position of law regarding the scope of the powers of this Court to accept and act upon the documents produced by the petitioners/accused in a proceedings under section 482 of Cr.P.C to quash the complaint against them. It is settled that the inherent jurisdiction can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. The powers under section 482 of Cr.P.C. will be exercised very sparingly, cautiously and only on satisfaction that the proceedings in lower court amounts to abuse of the process of court or to prevent vexatious litigation. Even during such enquiry, the scope is very limited and it shall be confined to see whether the allegations as such and available materials prima facie constitute an offence. The sufficiency of those materials and its correctness is beyond the scope of examination under section 482 of Cr.P.C. A Division Bench of this court in **Alexander v. C.B.I** (2006

(2) KLT 240), though therein the challenge was against framing of charge, this Court has held that at the time of framing of charges, Court need consider only whether there is prima facie case or not. It is also held:

> "However if the documents relied on by the prosecution negatives the case of the prosecution, and there is no prima facie case, no charges need be framed and can be discharged".

In the present case, the petitioners approached this Court to quash the complaint as such and to substantiate the above prayer they have produced certain documents. Framing of charge is a process by which the trial being commenced. Even according to the above decision, the trial court has no jurisdiction to look into the documents produced by the defence, but the court has to confine only to the documents relied on by the prosecution. If the documents relied on by the prosecution negatives the case of the prosecution, no charges need be framed, consequently the accused can be discharged. Otherwise,

if the admissible facts through the admitted documents are not capable for constituting an offence or negatives the prosecution case as such, the court can discharge the accused. From the above it is crystal clear that even at the time of framing charge, the trial court , even though it is the fact finding authority, is not bound to look into the documents produced by the defence. If that be so, in a proceedings under section 482 of Cr.P.C., the High Court is not expected to admit and act upon the documents produced by the defence which are not relied and produced by the prosecution, for quashing the proceedings pending against them.

8. In a Full Bench decision in **State of Orissa v. Debendra Nath Padhi** (2005 (1) KLT 80 (SC), the apex court has held that the accused has no right to produce any material at the time of framing of charge. In paragraph 5 of the said decision, the apex court has held:

> "On the other hand, it was contended on behalf of the State that the observations made in Satish Mehra's case run counter to the views

> expressed by this Court in large number of decisions, it amounts to upsetting well settled legal propositions and making nugatory amendments made in Code of Criminal Procedure from time to time and would result in conducting a mini trial at the stage of framing of charge or taking cognizance. Such a course would not only be contrary to the object and the scheme of the Code but would also result in total wastage of the court time because of conducting of two trials, one at the stage of framing charge and the other after the charge is framed. It was contended that on true construction of S.227 of the code only the material sent by prosecution along with the record of the case and the documents sent along with it can be considered by the Trial Court at the time of framing of the charge. The accused at that stage has no right to place before the court any material".

That being the position, I am of the view that the accused are not entitled to produce documents, which are not placed or relied on by the prosecution in trial, in a proceedings under section 482 of Cr.P.C.and to press into service of those documents for quashing the proceedings pending against them in the court below, unless there are compelling reasons. In the decision reported in **Minakshi Bala v. Sudhir Kumar {(1994) 4 SCC 142},**

the apex Court in paragraph 7 of the judgment held:

> "If charges are framed in accordance with Section 240 Cr.P.C on a finding that a prima facie case has been made out - as has been done in the instant case - the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under Section 173 Cr.P.C. and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed under Section 240 Cr.P.C the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 Cr.P.C; nor would it be justified in invoking its inherent jurisdiction under Section 482 Cr.P.C to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence".

In the present case, the stage of framing charge is not reached. At the threshold of filing the complaint,

petitioners approached this Court under Section 482 of Cr.P.C to quash the proceedings. In the above decision, the Apex court has held that the High Court will not be justified in invoking its inherent jurisdiction under section 482 of Cr.P.C. to quash the same except in those rarer cases where forensic exigencies and formidable compulsions justify such a course. Going by the documents, other than the documents relied on by the complainant/prosecution, the subject matter of those documents and its applicability are only subject to proof and the same are still liable to be disputed until strictly proved. So it cannot be said that the case in hand is a rare case where forensic exigencies and formidable compulsions justify to act upon such course. Therefore, the documents of the above nature produced along with the petition under section 482 Cr.P.C. cannot be looked into and acted upon. In the decision reported in **State of Bihar v. Rajendra Agrawalla (1996 Crl.L.J. 1372),** the Apex Court in paragraph 5 of the judgment has held:

"It has been held by this Court in several cases that the inherent power of the court under Section 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the First Information Report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage it is not open for the court either to shift the evidence or appreciate the evidence and come to the conclusion that no prima case is made out. In a recent judgment of this Court to which one of us (Hon.K.Ramaswamy,J) was a member it has been held, following the earlier decision in Mrs.Rupan Deol Bajaj v.Kanwar Pal Singh Gill, (1995) 7 JT (SC) 299: (1995 AIR SCW 4100):

"It is thus settled law that the exercise of inherent power of the High court is an exceptional one. Great care should be taken by the High court before embarking to scrutinise the FIR/charge-sheet/compliant. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is concluded and the charge-sheet is laid the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions

which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The Court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence, on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out no further act could be done except to quash the charge sheet. But only in exceptional cases, i.e., in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance process of criminal is availed of in laying a complaint or FIR itself does not disclose at all any cognizable offence - the court may embark upon the consideration thereof and exercise the power.

When the remedy under section 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since efficacious remedy under Section 482 of the code is available. When the Court exercises its inherent power under Section 482 the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the court. When investigation officer spends considerable time to collect the evidence and places the charge-sheet before the Court, further action should not be short circuited by resorting to exercise inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power".

(emphasis supplied)

In the light of the above decision it can be seen that the inherent power of the High Court under section 482 of Cr.P.C. can be used very sparingly and cautiously only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the F.I.R. or complaint together with the other materials collected during investigation taken at their face value do not constitute the offence alleged. Therefore, the prime consideration of this Court should only be whether the exercise of the power to advance the cause of justice or it would be an abuse of the process of the court. As in the case, when the complainant spent considerable time to collect the evidence and place the complaint before the court, the further action should not be short circuited by resorting to exercise inherent power to quash the charge sheet. As stated in the above

decision, the social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole. Keeping in mind the above principle, I am of the view that the document of above nature produced by the petitioners cannot be acted upon at this stage and the petitioners are miserably failed to make out a case that the present case is a rarest one where forensic exigencies and formidable compulsions, justify to accept and act upon the documents produced in these proceedings so as to exercise the powers of this court under section 482 of Cr.P.C.in favour of the petitioners. Hence, in the light of the above settled position of law, the documents produced by the petitioners in support of their contention that the workers of the petitioners' estate are not coming under the definition of "workers" cannot be looked into in these proceedings. More over, the disputable fact regarding income of the workers of the estate owned by the petitioners are yet to be ascertained during evidence and

in these proceedings, this Court is not in a position to arrive at a conclusion on such disputed fact as to whether the workers of the petitioners will not come within the purview of "workers". Therefore, the contentions of the petitioners that their workers will not come within the purview of the definition of "workers" as contemplated by the Act fails.

9. Yet, another contention advanced on behalf of the petitioners is that in the light of annexure-H judgment, no prosecution will lie against the petitioners as the provisions of the Plantation Labour Act and Rules made thereunder are not applicable to Ambanad Estate. It is true that the offence alleged in the case involved in annexure-H judgment is punishable under section 39 of the Plantation Labour Act 1951, but the accused is one Bejoy Mathew, Assistant Manager, Ambanadu Estate, Kalthuruthy. Considering the factual situations involved in that case, there, the learned Magistrate came into the conclusion that the prosecution therein has failed to establish that

the workers in that case are receiving monthly wages lesser than Rs.750/- and on the basis of such factual finding, the Magistrate came into the conclusion that the Act and Rules are not applicable. But, in the present case as stated earlier, those facts are yet to be ascertained during the time of evidence and hence, annexure-H judgment has no relevance in this proceedings.

10. Another point strenuously argued by the counsel for the petitioners in both these cases is that the court below has no jurisdiction to take cognizance as the complaints were barred by limitation. In support of the above contention, the learned counsel invited my attention to section 40 of the Act which says:

> "Limitation of Prosecutions.- No Court shall take cognizance of an offence punishable under this Act unless the complaint thereof has been made or is made within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector:
>
> Provided that where the offence consists of disobeying a written order made by an inspector, complaint thereof may be made within six months of the date on which the offence is

alleged to have been committed".

On the basis of the above provision in the Act, the learned counsel submits that the Ist respondent conducted inspection on 17-9-2002 and therefore the complaints ought to have been filed on or before 17-12-2002, the date on which 3 months' time is completed from the date of the inspection. According to the counsel for the petitioner, in both these cases, annexure A complaints were filed only on 14-3-2003, i.e., after the expiry of the 3 months' time stipulated in section 40 of the Act. Hence, according to the counsel, the cognizance taken by the court below upon annexure A complaints is illegal and arbitrary as the complaints were filed beyond the time stipulated in the Act. Therefore, the Magistrate's power to take cognizance was barred by limitation in the facts and circumstances involved in the case.

11. Resisting the above contention, the Director General of Prosecutions and the learned Public Prosecutor

pointed out that in the light of the proviso to section 40, the complaints need to file within 6 months from the date of the detection of the alleged commission of the offence, provided, the offence inclusive of a disobeying written order made by the Inspector. In the present cases, it is pointed out that in both these cases, annexure A complaints were filed on 14-3-2003 before the expiry of the period of 6 months from 17-9-2002, the date of first inspection conducted by the Ist respondent through which he had noticed the defects. The learned Public Prosecutor further submitted that after 17-9-2002, 3 notices were issued to the accused, namely, annexure B1 dated 30-9-2002, annexure C1 dated 1-1-2003, and annexure D1 notice dated 21-2-2003. Thus, on the basis of the above materials on record, the learned Public Prosecutor submits that annexure A complaints were filed within the period of 6 months from the date of detection of the offence i.e., on 17-9-2002. It is relevant to note the proviso to section 40 of the Act which runs:

> "Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed."

On a close reading of the proviso to section 40, it can be seen that the prosecution will get the benefit of the proviso, only if the offences alleged consists of disobeying a written order made by the Inspector. It can be seen that if the prosecution wanted to avail the benefit of the proviso, there must be two sets of default. The most important and first part of the same is that the defects itself, which were noticed during the inspection and the second part is the non-compliance of the order issued for the rectification of those defects. In the present case, the Ist respondent had inspected the estate of the petitioners on 17-9-2002 and detected certain defects regarding the non compliance of the provisions of the Act and Rules. As per Section 40, instead of issuing an order in writing, the prosecution can straight away file a complaint on the

basis of such defects noticed during the inspection. In that case, the prosecution should have lodged the complaint within three months from the date of the inspection. On a reading of the proviso to section 40, it can be seen that a choice has been given to the prosecution either to file a complaint within three months from the date on which the offences came to the notice of the inspection authority or to issue an order in writing asking the persons responsible for the non compliance of the provisions of the Act or Rules to rectify the defects within a stipulated time. Even after giving such time for rectifying the defect and if the defects continue, then the prosecution can launch proceedings and in such cases, the complaint need to file only within 6 months from the date on which the offences came into the notice of the inspecting authority. It is an undisputed fact that the inspection was conducted on 17-9-2002 and thereafter annexures B1, C1 and D1 orders were issued by the Ist respondent Inspector informing the accused regarding the detection of the

offences and also directing them to rectify the defects and further they were warned regarding the initiation of prosecution proceedings on their failure in rectifying the defects so noticed and brought to their attention.

12. As revealed by the preamble of the Act, the object of the Act is to provide adequate measures for the welfare of labour, and to regulate the conditions of work, in plantations. Being a welfare legislation, especially meant for providing welfare of labour and regulating their working conditions, the Act and the provisions therein has to be considered harmoniously. In this juncture, it is to be remembered that the ultimate beneficiaries of the Act and Rules are the labourers who are constrained to work in plantations, which are mainly situating in mountain areas where the climatic and other health conditions are hazardous when compare with urban area. Major section of the workers engaged in the plantation field are not well educated or skilled workers and

among them literacy is comparatively very low. Hence majority of the workers themselves are unaware of the steps to be taken to protect their health and the preventive measures to be adopted for them and their family members. Whether their earnings are sufficient to meet those demands is another question! No doubt, our plantation products secure foreign money to this nation and hence the contribution from the part of the workers cannot be neglected. It was in the above factual situation and persistent demands from the workers the law making authority was constrained and thought of enacting the above Act and Rules to provide welfare measures to labour and to regulate the conditions of the work in plantation. Going by the various provisions of the Act and the Rules, we can see the measures provided in the Act and the Rules itself. Of course, those provisions are to be materialised by the management/ employer of the workers. The intention behind the incorporation of these welfare measures is to provide such welfare

measures to the poor workers and to achieve this goal, certain procedural formalities are provided in the Act itself. It is not the intention of the legislature to put the employer to face the prosecution as and when certain defects are detected. By providing time and opportunity to the management to cure the defects and to set right the amenities, what the legislature intended was to make available those facilities to the workers by insisting the management for the same. If the management rectifies the defects on giving them an opportunity, the ultimate beneficiaries namely the workers will get the benefits and therefore, there is no scope for a prosecution. But in the case of a management who regularly violates the provisions of the Act and Rules, and in default in complying with the orders, there may not be any scope for giving further time for rectifying the defects. Hence as per section 40 of the Act, an authority is given to the inspecting officers after considering the entire facts and circumstances and after evaluation of the entire situation

either to file the prosecution within 3 months from the date of detection or to give an opportunity by serving an order in writing for the compliance of the order and rectifying the defects and to launch the prosecution in case of further failure even after the order in writing. Thus, the proviso to section 40 has to be construed harmoniously so as to achieve the object aimed by the Act and Rules and thus it can be seen that the lodging of annexure A complaints dated 14-3-2003 before the court below is in time, i.e., within 6 months from 17-9-2002, the date on which the offence was detected and the power of the court below for taking cognizance upon such complaints are not barred by limitation under section 40 of the Act and therefore there is no legal impediment in proceeding with the complaints.

13. The learned counsel appearing for the petitioners on the basis of annexure-I order of this court took another ground of limitation and contended that annexure-A complaints in these cases are filed beyond the period of

limitation. Of course, in annexure-I order, this court has held that the complaint in that case was barred by limitation and in order to come into that conclusion, the learned Single Judge very much placed reliance on annexure-O document in that case. Annexure-O order mentioned in annexure-I judgment was not initially produced along with these Crl.M.Cs. But subsequently, the learned counsel for the petitioners by filing a memo dated 1-10-2007 produced a photo copy of annexure-O document mentioned in anenxure-I order of this court. Going by the above document, it can be seen that annexure-O is only an inspection order dated 23-7-90 whereby certain defects were brought to the notice of the addressees therein and the addressees were requested to take immediate steps to appoint a Welfare Officer and to report the fact to that office within a fortnight. Going by paragraph 4 of annexure -I order it can be seen that the defects noted in annexure-O proceedings has been rectified and the Inspector therein was requested to make a

personal inspection of the estate. It was about anneuxre-O order therein, the learned Single Judge held that he was unable to construe annexure-O as a written order to attract the proviso to section 40 of the Act. On the other hand, on a perusal of annexure B1 order, it can be seen that the petitioners were directed to take immediate steps to rectify the defects noted therein and to intimate the facts to the office of the Ist respondent within 15 days of the order. It was also informed the petitioners that failure to comply the orders are offences punishable under the Act and Rules and they were further warned that on their failure to comply with the orders, prosecution steps would be taken without further notice on the presumption that they had nothing to say in the matter. Annexure C1 order is also as that of annexure B1 order. In this juncture it is relevant to note that, in fact, annexure B1 order was addressed to the manager of the estate and on his annexure B2 reply, Ist respondent issued annexure C1 order to the petitioners. Thereafter

on 13-2-2003, the Ist respondent had conducted a cross inspection and thereafter issued annexure-D1 Show cause notice/Prosecution notice dated 21-2-2003. In annexure D1, several documents were referred regarding the inspection of the estate on 17-9-2002 and the cross inspection on 13-2-2003 and inspection orders namely annexures A1, B1 and C1 and also annexure C2 reply. On a perusal of annexure D1 order as disclosed from its caption which shown as, "Show cause/Prosecution notice", it is pointed out that all the former procedures and also the defects which are 6 in numbers which ought to have been rectified by the petitioners were brought to their attention. It is recited in annexure D1 that though they were ordered to rectify the defects within 15 days, the same were not rectified and the explanation offered was not satisfactory. Therefore, as per annexure D1 Show cause/Prosecution notice, the petitioners were directed to explain within 7 days in writing as to why prosecution proceedings should not be initiated against them for the

failure to implement the inspection order and the violations reported in that order. The petitioners were further cautioned that if they failed to submit satisfactory explanation within the stipulated time limit, prosecution steps will be initiated against them for the violations of the provisos of the Act and Rules on the presumption that they have nothing to say in the matter. On a comparison of annexure-O order mentioned in annexure-I order with that of annexure D1, it can be seen that annexure-O order cannot be treated as that of annexure D1. Therefore, annexure-I order has no relevance and is not capable to save the petitioners from the clutches of law. In the light of the above discussion, I am of the view that annexures B1, C1 and D1 documents can be treated as written order coming within the proviso to section 40 and therefore, annexure A complaints itself dated 14-3-2003 in both cases are within the time limit and there is no illegality or infirmity in taking cognizance by the court below upon those complaints and the same are not barred by

limitation.

14. Another point advanced by the petitioners and very much argued by the counsel for the petitioners is that annexure-A complaint is not maintainable since the petitioners will not come within the purview of "employer" as defined in section 2(e) of the Act. According to the petitioners, the petitioners are not responsible for the day-to-day management of the affairs of the estate. On the basis of annexure B2 reply of the Manager to Ambanad estate, the petitioner's counsel submits that the Manager is responsible for taking action as per the inspection order. It is further argued that in annexure C2 and D2 replies, the Ist petitioner who is the Director of the Company and Secretary of the Company pointed out that the Directors were not involved in the day-to-day management of the estate belonging to the company and the Directors/petitioners have no direct knowledge of the functioning of the said estate and the facilities provided therein. In the present case, a Superintendent was

appointed in charge of the estate and therefore, the petitioners who are Directors of the Company are not liable to be prosecuted as they are not "employers" within the meaning of section 2(e) of the Act. Further, on the strength of annexure-I order, the counsel argued that in the present case the Superintendent is the employer in whose name the estate has been registered and he is personally answerable and not the Directors.

15. I am afraid to accept the above contention. If such contentions are accepted, the real owners who have the ultimate control and benefit over the plantation can escape from all liabilities either statutory, civil or criminal, pointing out that a person was appointed to look after the affairs of the estate and fixing all liabilities upon his shoulder. In this juncture, it is appropriate to have a reading of section 2(e) of the Act which defined "employer" when used in relation to a plantation:

> "employer", when used in relation to a plantation, means the person who has the ultimate control over the affairs of the plantation,

> and where the affairs of any plantation are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) such other person shall be deemed to be the employer in relation to that plantation" .

Hence on a close reading of the above definition it can be seen that "employer means" the person who has the "ultimate control" over the affairs of the plantation, otherwise, on whose hand the ultimate control is vested regarding the affairs of the plantation. Besides such person, if any other person to whom the affairs of any plantation are entrusted, whatever designation assigned to him, that person shall also deemed to be the employer in relation to that person. If that be so, on complaining the violation of the provisions of the Act and Rules, a prosecution will sustain against the person who has ultimate control over the affairs of the Company and also against the deemed employer. In the present case, the Directors of the Company are the persons who have ultimate control over the plantation. It is for the

Directors of the Company to decide the mode of expenditure for the running of the company. If the company is not according sanction, or making suitable allotment of funds for providing the measures contemplated by the Rules, even if there is a person acting as either Manager or Superintendent or whatever the designation called, he may not be in a position to provide those amenities contemplated by the Rules. In the present case, the materials available on records show that the petitioners were individually directed to rectify the defects and they were cautioned about the launching of prosecution in case of failure on their part in complying with the direction. In a common order dated 14-6-2007 in Crl.M.C.Nos.1868,1869, 1871, 1872, 1873,1874,1884, 1886,1889, 1896,1900 and 1902 of 2007, a learned Judge of this Court has held that " Section 2(e) of the Act attempts only to bring in one more person-the Manager, Managing Agent, or Superintendent also into the chair of the employer by the deeming fiction and the

deemed employer cannot be held to displace the real employer from that chair. The ultimate employer must ensure vicariously and the Manager must personally ensure the actual implementation of the provisions of the Plantations Labour Act strictly in the plantation concerned at the risk of being prosecuted. That appears to be the clear legislative intent". In this juncture it is pertinent to note that in the present case the Ist respondent was constrained to send annexure C1 order to the petitioners in the light of annexure B2. Annexure B2 is the reply dated 24-10-2002 given by the Manager of the estate in pursuance of the inspection/written order dated 30-9-2002 sent by the Ist respondent. In annexure B2 reply as item No.11 of his comment, the manager has stated that his head office has been informed regarding the order of the Ist respondent to appoint a Welfare Officer in the estate. This fact itself is sufficient to hold that the "ultimate" control over the affairs of the plantation/estate is vested with the head office of the "Company/Directors of the

company" who is the "employer". In the light of this factual and legal position, it can be seen that the petitioners who are the Directors of the company are the "employers" as defined in section 2(e) of the Act for the purpose of this Act. If the contentions of the petitioners are accepted, the purpose will be defeated and the consequent result will be that the benefits envisaged by the Act will be denied to the beneficiaries and the real culprits can escape from the clutches of law. The Manager or the Superintendent or whatever name called, they are only the employees of the employer, probably they will be in a better position than the workers. Since certain persons are designated as Manager or Superintendent in whatever terms, they have no "ultimate control" but the same is vested with the Company Directors. Therefore, it cannot be held that no prosecution will lie against the petitioners/Company Directors even though the Manager or Superintendent of the estate are not arrayed as accused. In the present case, as evidenced by annexure B2, it is for

the petitioners to provide the welfare measures pointed out by the Ist respondent as per his notices mentioned above and thus according to the facts and circumstances involved in the case, the petitioners are the employers who are liable to be prosecuted for the offences as per annexure A complaint. In the light of the above discussion and on accepting the view adopted by the learned Single Judge of this Court in the order referred above, I hold that the petitioners who are the Managing Directors of the company to which the estate belonging are the `employers' of the plantation coming within the definition of section 2(e) of the Act. Therefore, there is no hurdle for prosecuting them as per annexure-A complaints for the offences alleged against them.

16. In the light of the above discussion, I am of the view that annexure A complaints and the cases instituted upon the same are in accordance with law and there is no legal impediment or infirmity, warranting interference of this court under section 482 of Cr.P.C. and to quash the

complaints. Therefore, these Crl.M.Cs are devoid of any merit and the same are dismissed.

V.K.MOHANAN, JUDGE.

kvm/-

V.K.MOHANAN, J.

No....

Judgment/Order

Dated: